

CCRB INVESTIGATIVE RECOMMENDATION

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|--|---|-------------------------------------|---|---|--|
| Investigator: Laura Strauss | Team: Squad #5 | CCRB Case #: 202004055 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input type="checkbox"/> Abuse | <input checked="" type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Thursday, 06/04/2020 8:00 PM | Location of Incident: East 136th Street and Brook Avenue | Precinct: 40 | 18 Mo. SOL 12/4/2021 | EO SOL 5/4/2022 | |
| Date/Time CV Reported Sat, 06/06/2020 4:30 PM | CV Reported At: CCRB | How CV Reported: On-line website | Date/Time Received at CCRB Sat, 06/06/2020 4:30 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|----------------------------|--------|--------|---------|
| 1. Officers | | | |
| 2. POM Edward Weisenburger | 18143 | 952338 | SRG 1 |
| 3. LT Joel Witriol | 00000 | 942838 | PSA 7 |
| 4. CPT Julio Delgado | 00000 | 918927 | SRG 2 |
| 5. POM Sandy Vargas | 08465 | 954393 | SRG 4 |
| 6. POM Stephen Centore | 31854 | 936328 | DIS CTL |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|---------------------------|-----------|--------|----------|
| 1. POF Regina Miranda | 31613 | 930745 | SRG 1 |
| 2. LT Michael Lam | 00000 | 947150 | SRG 1 |
| 3. SGT Christophe Zappoli | 00646 | 940887 | SRG 2 |
| 4. POM Vincent Ciccolella | 20819 | 958409 | SRG 4 |
| 5. POM Jonathan Ku | 20058 | 951890 | SRG 4 |
| 6. SGT Steven Lackos | 04638 | 935671 | DIS CTL |
| 7. POM Omar Tejada | 11809 | 956296 | SRG 2 |
| 8. LT Christophe Catalano | 00000 | 936323 | SRG 1 |
| 9. POM Jimmy Perez | 08269 | 941242 | PSA 7 |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A. Officers | Force: Officers used physical force against an individual. | |
| B.LT Joel Witriol | Discourtesy: Lieutenant Joel Witriol spoke discourteously to § 87(2)(b) | |
| C.POM Stephen Centore | Force: Police Officer Stephen Centore used physical force against § 87(2)(b) | |
| D. Officers | Force: Officers used physical force against § 87(2)(b) | |
| E.LT Joel Witriol | Force: Lieutenant Joel Witriol used physical force against § 87(2)(b) | |
| F.POM Stephen Centore | Discourtesy: Police Officer Stephen Centore spoke discourteously to § 87(2)(b) | |
| G.POM Stephen Centore | Off. Language: Police Officer Stephen Centore made remarks to § 87(2)(b) based upon her gender. | |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| H.L.T Joel Witriol | Force: Lieutenant Joel Witriol struck § 87(2)(b) with a baton. | |
| I. Officers | Force: Officers struck § 87(2)(b) with a baton. | |
| J. Officers | Force: Officers struck § 87(2)(b) with a baton. | |
| § 87(2)(g), § 87(4-b) | | |
| § 87(2)(g), § 87(4-b) | | |
| § 87(2)(g), § 87(4-b) | | |
| § 87(2)(g), § 87(4-b) | | |
| § 87(2)(g), § 87(4-b) | | |
| § 87(2)(g), § 87(4-b) | | |
| § 87(2)(g), § 87(4-b) | | |
| § 87(2)(g), § 87(4-b) | | |

Case Summary

On June 6, 2020, § 87(2)(b) filed this complaint on the CCRB's website.

On June 4, 2020, § 87(2)(b) attended a Black Lives Matter protest in Mott Haven in the Bronx. A Citywide curfew was in effect beginning at 8 p.m. At approximately 8 p.m., at East 136th Street and Brook Avenue, officers surrounded and apprehended the large group of protestors. Officers allegedly pushed an unidentified individual onto the ground and arrested her (**Allegation A: Force**, § 87(2)(g)). As § 87(2)(b) stood with a group of protestors, Lieutenant Joel Witriol of PSA 7 pulled § 87(2)(b) arm and said, "Get the fuck out of here" (**Allegation B: Discourtesy**, § 87(2)(g)). Police Officer Stephen Centore of the Disorder Control Unit and unknown officers used a leg sweep against § 87(2)(b) (**Allegation C: Force**, § 87(2)(g)). **Allegation D: Force**, § 87(2)(g)). Lt. Witriol kicked § 87(2)(b) face with the heel of his boot (**Allegation E: Force**, § 87(2)(g)). PO Centore told § 87(2)(b) "Don't grab my fucking dick, you asshole bitch" (**Allegation F: Discourtesy**, § 87(2)(g)). **Allegation G: Offensive Language**, § 87(2)(g)). PO Centore, along with Police Officers Sandy Vargas, Vincent Ciccolella, and Jonathan Ku, all assigned to SRG 4, apprehended § 87(2)(b). During this apprehension, Lt. Witriol and additional officers allegedly struck § 87(2)(b) with batons (**Allegations H-I: Force**, § 87(2)(g)). Officers allegedly continued to strike § 87(2)(b) with batons after she was handcuffed (**Allegation J: Force**, § 87(2)(g)). § 87(2)(b) was taken to § 87(2)(b) by Police Officer Edward Weisenburger of SRG 1, where she received medical treatment for her injuries. § 87(2)(b) received a summons for violating the Mayor's Executive Order (BR 01).

§ 87(2)(g), § 87(4-b)

The investigation obtained 43 BWC videos (relevant footage at BR 02-12), TARU handheld footage (BR 13), and a brief cell phone video recorded by § 87(2)(b) friend (BR 14) (summaries for all videos contained in BR 15-16). All references to video evidence below refer to the time stamp in the video player, and not to any on-screen clock embedded in the footage itself.

This case involves allegations of kettling and other concerted enforcement actions performed under the command and supervision of the then-Chief of Department Terrance Monahan and Assistant Chief Kenneth Lehr. These allegations are being addressed in case 202006855. This investigation was delayed by the COVID-19 global pandemic, delays in scheduling officers for remote interviews, and delays in identifying § 87(2)(b) arrest in a vast amount of video footage.

Findings and Recommendations

Allegation (A) Force: Officers used physical force against an individual.

§ 87(2)(b) recounted (BR 17-18) that at some point after officers surrounded the protestors and blocked them from leaving, but before officers began arresting all the protestors en masse, a woman who was in the front of the protest was arrested. Officers pushed the woman onto the ground. § 87(2)(b) did not know this woman, did not see exactly what happened to her, and could provide no further details about her or the officers who used force against her.

Lt. Witriol, PO Ciccolella, PO Ku, PO Vargas, PO Weisenburger, Police Officer Regina Miranda, and Police Officer Jimmy Perez (BR 19-26) each denied seeing or did not recall whether officers pushed an individual onto the ground. PO Miranda, who was assigned to SRG 1 and has since been reassigned to the 94th Precinct, was assigned to take § 87(2)(b) arrest prior to her request for medical attention. PO Perez, of PSA 7, was present during § 87(2)(b) arrest.

Absent more detailed information about which officers used force against which civilian and in what context, the investigation was unable to determine whether there was any video footage depicting the specific use of force alleged by § 87(2)(b).

The detail rosters (BR 27) did not include all officers assigned to the detail and did not document where and when officers were working. The summons log from the 40th Precinct on June 4, 2020, detailed that over 240 individuals were issued summonses (BR 28). Without being able to narrow down the pool of potential officers, the investigation was unable to request additional documents to aid in identifying the female victim or the officers who allegedly took her to the ground.

Twenty-five additional CCRB complaints were filed regarding this protest. Cases 202100597, 202100495, 202005994, 202005870, § 87(2)(g) 202004124, and 202004094 involved allegations where an officer pushed a female or an unidentified individual. Absent further information about this incident, the investigation was unable to determine whether any of those CCRB cases encompass this allegation.

Given § 87(2)(b) limited description of this incident, insufficient police documentation, an extremely large pool of potential officers, and the scope of this protest, and absent video footage depicting this incident, the investigation was unable to identify the woman whom § 87(2)(b) saw pushed to the ground. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (B) Discourtesy: Lieutenant Joel Witriol spoke discourteously to § 87(2)(b)

As noted above, officers began arresting everyone who was present at the protest, including § 87(2)(b) once the 8 p.m. curfew elapsed.

§ 87(2)(b) testified that as she stood with a densely packed group of protestors and held hands with them, Lt. Witriol yanked her left forearm with two hands and pulled her away from the group. As Lt. Witriol pulled § 87(2)(b) arm, he screamed, “Get the fuck out of here!” Aside from standing and holding hands with other protestors, § 87(2)(b) was not doing anything else at that time. Lt. Witriol held onto § 87(2)(b) arm and pulled her toward a group of five or six officers, who ultimately arrested her.

In Sgt. Zappoli’s BWC footage (BR 02, at 06:09), Lt. Witriol, the officer in the white shirt, swung § 87(2)(b) around while holding onto her left arm. Simultaneously, an officer could be heard saying, “Get the fuck out of here.” It is not visible in the footage which officer made the remark. At that time, there were several officers in the general vicinity, but there were no other officers next to § 87(2)(b). No verbal commands were audibly issued to § 87(2)(b) prior to that point. This video footage was identified by the investigation as the video that shows the earliest point of Lt. Witriol’s interaction with § 87(2)(b).

Lt. Witriol testified that he did not have any recollection of this incident. Lt. Witriol described the protest overall as chaotic and not peaceful, with civilians throwing various objects and being disorderly. Lt. Witriol did not recall saying, “Get the fuck out of here,” or using profanity at any

point, and he did not recall hearing any other officer make that remark. After viewing the relevant portion of Sgt. Zappoli's BWC footage, Lt. Witriol confirmed that he heard an officer make the profane remark in the footage, but he testified that he did not know who said it. Lt. Witriol did not "believe" that it was his voice, but he was not sure and did not categorically deny it.

PO Centore (BR 29), PO Ciccolella, PO Ku, PO Vargas, and PO Perez either did not hear or did not recall hearing an officer say, "Get the fuck out of here." Upon being presented with BWC footage, each officer acknowledged hearing the statement on video but could not identify which officer made the remark. PO Weisenburger and PO Miranda testified that they were not present during § 87(2)(b) arrest and solely interacted with her after she was handcuffed. Neither PO Weisenburger nor PO Miranda heard an officer tell § 87(2)(b) "Get the fuck out of here."

§ 87(2)(b) testified that the officer who initiated her arrest – identified as Lt. Witriol – pulled her left arm and stated, "Get the fuck out of here." BWC footage depicts this moment, precisely as § 87(2)(b) described, and an officer makes the exact statement that § 87(2)(b) alleged. Lt. Witriol did not deny making the remark and did not deny that the voice on the video was his own. Additionally, at the time the statement was made, Lt. Witriol was the officer in closest proximity to § 87(2)(b). As such, given the above context, with no alternate explanation from Lt. Witriol, the investigation credited § 87(2)(b) testimony.

The NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Officers must "maintain a higher standard of integrity than is generally expected of others." Patrol Guide Procedure 200-02 (BR 30). The NYPD's disciplinary decisions "have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer's verbal slip does not rise to the level of actionable misconduct." NYPD Disciplinary Case No. 76927/04 (2004) (BR 31).

The video footage does not show what happened prior to Lt. Witriol grabbing § 87(2)(b) arm, and Lt. Witriol was unable to provide any specific context aside from the protest being generally chaotic. However, at the time that Lt. Witriol made the profane remark, § 87(2)(b) was not free to leave and was about to be arrested. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Force: Police Officer Stephen Centore used physical force against § 87(2)(b)

Allegation (D) Force: Officers used physical force against § 87(2)(b)

It is undisputed that PO Centore forcibly took § 87(2)(b) to the ground.

§ 87(2)(b) testified that Lt. Witriol grabbed her left forearm and pulled her toward a group of officers. Prior to that point, § 87(2)(b) had merely been standing and holding hands with a group of protestors. Two or three officers, who were standing behind § 87(2)(b) hit the back of her knees, either with their batons or their feet. § 87(2)(b) could not see those officers and thus was unable to provide a detailed description of them. § 87(2)(b) did not resist or move her body around at all. She did not recall if officers said anything at that time. § 87(2)(b) then fell onto her knees on the sidewalk.

In Sgt. Zappoli's BWC footage (BR 02, at 06:09), Lt. Witriol swings § 87(2)(b) around while holding onto her left arm. As discussed, this video footage was identified as depicting the earliest point of officers' interactions with § 87(2)(b). Lt. Witriol and other officers reach for § 87(2)(b) arms, and an officer repeatedly tells her to get down. There is a great deal of movement and it appears that officers are unable to immediately cuff § 87(2)(b). However, the BWC is intermittently obstructed and does not provide a comprehensive view of the incident, due to the camera angle and the chaotic and crowded nature of the protest.

PO Centore's BWC footage (BR 07, at 36:18) shows that PO Centore was present when an officer repeatedly told § 87(2)(b) to get down. BWC footage does not depict which officers took § 87(2)(b) down, or the manner in which they did so. PO Ciccolella's BWC footage (BR 09, at 22:51) shows § 87(2)(b) who is wearing green pants, on the ground. Though the precise moment that § 87(2)(b) is taken down is not visible, it appears that PO Ciccolella, PO Vargas, and PO Ku approach once she is already on the ground.

PO Centore testified that he heard an officer repeatedly tell § 87(2)(b) to "get down." Based solely upon hearing those repeated commands, PO Centore believed that § 87(2)(b) was resisting arrest at that time. PO Centore then used a "leg sweep" to take § 87(2)(b) down to the ground. PO Centore's shin and heel made contact with the bottom of § 87(2)(b) leg, by her shin and ankle, which caused § 87(2)(b) to fall directly onto the ground. PO Centore did not recall whether any other officer assisted with taking § 87(2)(b) down.

PO Ciccolella testified that § 87(2)(b) was already on the ground when he approached. He did not recall seeing how § 87(2)(b) ended up on the ground. PO Ciccolella did not see officers hit the back of § 87(2)(b) knees or use a leg sweep to take her down.

Lt. Witriol, PO Vargas, PO Ku, and PO Perez testified that they did not recall this incident. Each initially denied seeing or did not recall whether officers used a leg sweep to bring an individual down to the ground. Upon viewing BWC footage, PO Vargas testified that he ran toward a commotion to assist officers, and § 87(2)(b) was already on the ground when he approached. PO Vargas did not know why or how § 87(2)(b) ended up on the ground. PO Perez's attention was directed to § 87(2)(b) when she began screaming, and he did not recall observing officers initially approach § 87(2)(b). PO Perez did not independently recall observing officers take § 87(2)(b) down to the ground. PO Perez did not assist with taking her to the ground. After viewing BWC footage, Lt. Witriol and PO Ku stated that they did not independently recall § 87(2)(b) arrest, and both denied utilizing a forcible takedown against any individuals.

Requests for Threat, Resistance, or Injury Reports (TRI) prepared for § 87(2)(b) arrest yielded negative results (BR 32).

Officers may use force when it is reasonable to place a person in custody, to ensure the safety of themselves, and to protect other officers. Any use of force must be reasonable under the circumstances and not excessive. In determining whether the use of force is reasonable, relevant factors include the nature and severity of the crime, the actions taken by the subject, the immediacy of the perceived threat or harm to officers, whether the subject is actively resisting custody, and whether the subject is attempting to evade arrest by flight. Patrol Guide Procedure 221-01 (BR 33).

BWC footage captures Lt. Witriol grabbing § 87(2)(b) arm and officers attempting to handcuff her, but it does not depict the moments leading up to this interaction. Though § 87(2)(b) precise actions are not visible, it does appear that she subsequently offers some level of resistance, given the way that officers continue to reach for her arms and issue repeated commands to gain

compliance. However, absent more comprehensive video footage or officer testimonies regarding what happened prior to Lt. Witriol grabbing § 87(2)(b) arm, the investigation was unable to determine what actions she took, whether officers justifiably perceived her as a threat, or whether officers gave § 87(2)(b) a chance to comply prior to using force. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Force: Lieutenant Joel Witriol used physical force against § 87(2)(b)

§ 87(2)(b) testified that after she was taken to the ground, she fell onto her knees, on the sidewalk. She looked up at Lt. Witriol, who then laughed and kicked the right side of her face with the heel of his boot. Lt. Witriol's boot made contact with § 87(2)(b) right eye and cheek. Lt. Witriol's kick caused § 87(2)(b) face to bleed, and she sustained bruising to her right eye, cuts on her face, upper cheek, and nose, and a boot-print mark on her face. § 87(2)(b) thought that she may have had a concussion, and PO Weisenburger subsequently transported her to the hospital. § 87(2)(b) specified that Lt. Witriol was the only white-shirted officer who assisted in her arrest, and she testified that she saw Lt. Witriol's face before he kicked her. § 87(2)(b) provided a brief cell phone video and screenshot depicting Lt. Witriol walking at the protest, and she specified that he was the officer who kicked her face (BR 14 and 46). During her CCRB interview, § 87(2)(b) provided her approximate height as 5'3" and weight as 120 pounds (BR 17).

A Medical Treatment of Prisoner Form prepared by PO Weisenburger (BR 34) documented § 87(2)(b) injuries: dizziness, swelling and pain to right side of face and eye, and head pain. The narrative section detailed that § 87(2)(b) had swelling and pain in her head and on her face caused by large crowd of protestors (see OMN). Requests for TRI Reports prepared for § 87(2)(b) arrest yielded negative results (BR 32).

§ 87(2)(b) FDNY Ambulance Call Report (see Privileged Records) details that she reported having neck pain that radiated to her head, and that she sustained a bloody contusion on her nose. Her records from § 87(2)(b) (see Privileged Records) detail that she reported being shoved to the ground, and that she specifically reported that an officer kicked her in the head. § 87(2)(b) described acute pain to her head, jaw, and eye. § 87(2)(b) had an abrasion on the right side of her nose, bleeding/bruising on her right cheek, and bruising to her bilateral lower forearms. § 87(2)(b) initially reported that she lost consciousness for approximately three minutes, but she later stated that she was unsure if she lost consciousness. CT scans revealed mild soft tissue swelling to § 87(2)(b) face. No concussion was documented.

§ 87(2)(b) a complainant in case § 87(2)(b) recounted sitting near § 87(2)(b) after she was handcuffed (BR 35). § 87(2)(b) identified her by her distinct facial tattoos. He saw that she had blood smeared on her face and a gash on the bridge of her nose.

In PO Centore's BWC footage (BR 07, at 36:30), Lt. Witriol appears to move his leg toward § 87(2)(b) who is on the ground. There is a thudding noise and § 87(2)(b) immediately screams. Lt. Witriol then begins to turn away from § 87(2)(b) and simultaneously, an officer extends his right arm toward Lt. Witriol, in an apparent attempt to push Lt. Witriol away. The camera angle and

extremely dark setting prevented the BWC from capturing a comprehensive view of this portion of the incident. PO Centore's BWC footage does not show § 87(2)(b) on the ground, but the video was identified as depicting her arrest given that Sgt. Zappoli's BWC footage (BR 02, at 06:09) depicts what happens seconds prior, when Lt. Witriol grabs § 87(2)(b) arm, and PO Ciccolella's BWC footage (BR 09, at 22:51) depicts what happens seconds later, when § 87(2)(b) is visible on the ground. Throughout this time frame, there are many uniformed officers in the area and at least five officers are assisting with arresting § 87(2)(b).

In PO Weisenburger's BWC footage (BR 03, at 15:24), PO Weisenburger asks § 87(2)(b) if she has short term memory loss, and she says that she thinks so. She states that she is very confused and does not know why. § 87(2)(b) also states that she had no idea where she was or who she was for three minutes. At 17:44, § 87(2)(b) tells an EMT that she "got stomped on in the face."

Screenshot images from PO Miranda's and PO Weisenburger's BWC footage show abrasions to § 87(2)(b) face (BR 36).

Lt. Witriol testified that he did not recall interacting with § 87(2)(b) and did not have any recollection of this incident. The protest was very chaotic, and Lt. Witriol assisted officers with physically handcuffing arrestees, but he was unable to provide any details of those arrests or how he assisted. To Lt. Witriol's recollection, he did not kick a protestor's face – he specifically testified in regards, "No, can't recall something like that, no." After viewing PO Centore's BWC footage, Lt. Witriol identified himself in the video but still could not independently recall being present during § 87(2)(b) arrest. Lt. Witriol was solely able to explain that, based on the video, it appeared that he assisted two officers with arresting or restraining an individual who was resisting. Lt. Witriol acknowledged that he may have moved his leg, but he did not think that he kicked § 87(2)(b) face. He stated, "While someone is resisting, a lot of things can happen potentially in the face. So, if it was me, did I make contact like that? Maybe, I don't know, but I don't think so." During his CCRB interview, Lt. Witriol provided his height as 5'9" and weight as 213 pounds (BR 37).

PO Centore and PO Vargas testified that they did not see an officer kick § 87(2)(b). PO Ciccolella testified that he did not recall observing an officer kick § 87(2)(b). PO Ku and PO Perez, who did not recall this incident, stated that they did not observe an officer kick any individual. As noted above, PO Centore believed that § 87(2)(b) was resisting solely based upon hearing an officer repeatedly tell her to get down. PO Vargas, PO Ciccolella, and PO Ku – per their own testimonies or BWC footage – approached the location when § 87(2)(b) was on the ground, and thus, could not account for her actions prior to that point. Upon viewing PO Centore's BWC footage, PO Centore, PO Vargas, PO Ciccolella, and PO Ku testified that they did not independently recall observing Lt. Witriol make a kicking motion with his leg toward § 87(2)(b). After viewing BWC footage, PO Perez stated that he could not tell if the officer depicted was Lt. Witriol, whom he knows from PSA 7. PO Perez did not independently recall observing an officer move his leg toward § 87(2)(b) and he did not see an officer kick her.

PO Miranda and PO Weisenburger testified that they were not present during § 87(2)(b) arrest and they did not observe an officer kick § 87(2)(b) in the face. § 87(2)(b) did not inform PO Miranda about any of the circumstances of her arrest. PO Miranda observed that § 87(2)(b) had a scratch, which was bleeding, on the bridge of her nose. § 87(2)(b) asked PO Miranda to squirt water on her face, which she did. PO Weisenburger first encountered § 87(2)(b) while he waited with PO Miranda, who was bringing her arrestees to a prisoner van. § 87(2)(b) complained of pain and swelling to her head and stated that earlier, while on the ground, she was kicked in the face. § 87(2)(b) had minor swelling and discoloration around her eye. PO Weisenburger was concerned that § 87(2)(b) might have a concussion, and § 87(2)(b) agreed to get medical attention. PO

Weisenburger brought § 87(2)(b) to § 87(2)(b) where § 87(2)(b) informed him that an officer had intentionally kicked her in the face during her arrest (see OMN).

Lt. Witriol initially denied kicking § 87(2)(b) before later testifying that he did not “think” that he did so. Lt. Witriol was unable to explain what he was doing in the moment that the BWC footage showed his leg moving toward § 87(2)(b). As such, given § 87(2)(b) documented injuries, which are consistent with being kicked in the face, video footage showing Lt. Witriol moving his leg toward § 87(2)(b) and her immediately screaming thereafter, and § 87(2)(b) reports to PO Weisenburger and medical personnel that she was kicked in the face by an officer, the investigation determined that Lt. Witriol did kick § 87(2)(b) as she alleged.

Officers may use force when it is reasonable to place a person in custody, to ensure the safety of themselves, and to protect other officers. Any use of force must be reasonable under the circumstances and not excessive. In determining whether the use of force is reasonable, relevant factors include the nature and severity of the crime, the actions taken by the subject, the immediacy of the perceived threat or harm to officers, whether the subject is actively resisting custody, and whether the subject is attempting to evade arrest by flight. Patrol Guide Procedure 221-01 (BR 33).

At the time Lt. Witriol kicked § 87(2)(b) she was not suspected of committing a violent crime, several additional officers were present, and she was on the ground. § 87(2)(b) was also significantly smaller than Lt. Witriol and the other officers attempting to handcuff her. Lt. Witriol did not recount any safety concerns about § 87(2)(b) or allege that she was physically aggressive. As discussed above, though there was no clear testimony about § 87(2)(b) resistance prior to being taken down, video footage appeared to show that she offered some level of resistance.

§ 87(2)(g)

The injuries § 87(2)(b) sustained, which required medical attention, emphasize the excessive level of force with which Lt. Witriol kicked her.

§ 87(2)(g)

Allegation (F) Discourtesy: Police Officer Stephen Centore spoke discourteously to § 87(2)(b).

Allegation (G) Offensive Language: Police Officer Stephen Centore made remarks to § 87(2)(b) based upon her gender.

In PO Centore’s BWC footage (BR 07, at 36:32), directly after Lt. Witriol kicked § 87(2)(b) PO Centore said to her, “Don’t grab my fucking dick, you asshole bitch.” At that point, officers were attempting to apprehend § 87(2)(b) but the footage does not provide a clear view of exactly what was happening. The footage does not show § 87(2)(b) reaching for or grabbing PO Centore’s genitals.

§ 87(2)(b) did not testify that PO Centore used discourteous or offensive language.

In his testimony for § 87(2)(g) PO Centore testified that he made a statement along the lines of, “Don’t grab my fucking dick, you asshole bitch” (BR 38). A woman on the ground, who had not been identified as § 87(2)(b) at the time of the interview, reached up and grabbed PO Centore’s penis and scrotum and squeezed, which caused a great deal of pain. He believed that he made the remark to a woman who was on the ground and actively resisting being placed under

arrest. Upon viewing his BWC footage, PO Centore confirmed that he stated, “Don’t grab my fucking dick, you asshole bitch.” In his testimony for this case, PO Centore clarified that after he took § 87(2)(b) down to the ground, she grabbed and squeezed his penis and scrotum. PO Centore maintained that he made the profane remark because he was in a great deal of pain.

Lt. Witriol, PO Ciccolella, PO Ku, PO Vargas, and PO Perez testified that they either did not see or did not recall seeing § 87(2)(b) reach for or grab an officer’s genitals.

The investigation was unable to determine, by a preponderance of the evidence, whether § 87(2)(b) grabbed PO Centore’s genitals. It was not depicted in any video footage and no other officers testified to seeing it happen.

The NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Officers must “maintain a higher standard of integrity than is generally expected of others.” Patrol Guide Procedure 200-02 (BR 30). The NYPD’s disciplinary decisions “have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer’s verbal slip does not rise to the level of actionable misconduct.” NYPD Disciplinary Case No. 76927/04 (2004) (BR 31). Officers are prohibited from using discourteous or disrespectful remarks regarding another person’s ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability. Patrol Guide Procedure 203-10 (BR 39).

§ 87(2)(g)

Allegation (H) Force: Lieutenant Joel Witriol struck § 87(2)(b) with a baton.

Allegation (I) Force: Officers struck § 87(2)(b) with a baton.

Allegation (J) Force: Officers struck § 87(2)(b) with a baton.

§ 87(2)(b) testified that after Lt. Witriol kicked her, officers pushed her onto the ground and repeatedly struck her with batons on her back and the back of her head for approximately five minutes. Lt. Witriol struck § 87(2)(b) first and the other officers then followed. She thought Lt. Witriol and the four officers surrounding her were likely the ones who struck her with batons, but she was not certain. Two officers then restrained § 87(2)(b) wrists with zip ties while one officer held her arm. She was compliant while being zip-tied. After § 87(2)(b) was zip-tied, officers continued striking her with their batons until she “blacked out.” She did not know which officers struck her with batons. When § 87(2)(b) awoke, she was seated beside the sidewalk on the opposite side of East 136th Street. She was not sure whether she fully lost consciousness when she blacked out. § 87(2)(b) sustained marks on her back and a bump on the back of her head from the baton strikes.

As noted above, § 87(2)(b) medical records documented facial injuries and bruising to her forearms. § 87(2)(b) reported having neck, head, jaw, and eye pain, and provided varying accounts regarding her loss of consciousness. § 87(2)(b) records do not document any injuries to her back or head.

The following officers' BWC videos most clearly depict § 87(2)(b) arrest: Sgt. Zappoli (BR 02, 06:10 to 06:24), PO Centore (BR 07, 36:15 to 36:41), PO Ciccolella (BR 09, 22:42 to 23:29), PO Ku (BR 10, 22:43 to 23:44), and PO Vargas (BR 11, 22:12 to 23:17). In sum, the footage shows Lt. Witriol pulling § 87(2)(b) while grasping her left arm, officers reaching for § 87(2)(b) arms and telling her to get down, and Lt. Witriol moving his leg toward § 87(2)(b) in a manner consistent with kicking her. It subsequently shows § 87(2)(b) lying on the ground and refusing to give officers her arms, and several officers handcuffing her and lifting her into an upright position. These officers included PO Ciccolella, PO Ku, and PO Vargas. PO Centore had walked away by this point, and Lt. Witriol was present but does not physically assist in the footage. It also shows PO Ku and PO Vargas eventually leading § 87(2)(b) to sit with a large group of handcuffed arrestees.

The footage does not depict which additional officers, if any, assisted with § 87(2)(b) arrest. Approximately 47 seconds elapsed between the time that Lt. Witriol grabbed § 87(2)(b) arm and the time that officers lifted her off the ground. The footage does not depict any officer striking § 87(2)(b) with a baton prior to her being handcuffed. Due to the camera angle, quick camera motion, and dark, crowded setting, the BWC footage does not provide a comprehensive view of the incident – notably, there are several points at which § 87(2)(b) and officers are not in view. The footage shows definitively that officers did not strike § 87(2)(b) with batons after she was handcuffed.

Lt. Witriol testified that he did not have any recollection of this incident. Lt. Witriol was equipped with a foldable asp and a straight baton. Lt. Witriol did not recall seeing officers strike any individuals with a baton. Lt. Witriol did not “believe” that he struck any individuals with his baton and stated, “But if I did, I don’t know if it was a female, male, it was chaotic, and it’s a day that you cannot remember much about it.” Lt. Witriol did not strike any individuals with his baton after they were handcuffed, nor did he observe any officer do so. After being presented with BWC footage, Lt. Witriol acknowledged seeing himself in the video but maintained that he did not independently recall being present during § 87(2)(b) arrest.

PO Centore and PO Ciccolella testified that when § 87(2)(b) was on the ground, she flailed her arms and kicked her feet, and they attempted to grab her arms in order to handcuff her. PO Centore and PO Ciccolella denied striking § 87(2)(b) with a baton, and each either did not observe or did not recall observing any officer strike § 87(2)(b) with a baton. PO Miranda and PO Weisenburger, who testified that they were not present during § 87(2)(b) arrest, stated that they did not see any officer strike any individuals with a baton, and neither recounted that § 87(2)(b) informed them that officers had struck her with batons.

PO Vargas, PO Perez, and PO Ku testified that they did not recall this incident. Each denied striking any individuals with a baton and did not observe any officer strike any individual with a baton. Upon viewing BWC footage, PO Vargas recounted that he attempted to handcuff § 87(2)(b) by pulling her right arm from underneath her body. PO Perez testified that he did not think that he physically assisted with arresting § 87(2)(b) and that he solely observed officers attempt to handcuff her. PO Ku maintained that he did not independently recall § 87(2)(b) arrest.

Based upon the BWC footage and § 87(2)(b) medical records, the investigation determined that officers did not, as § 87(2)(b) alleged, strike her with batons on the back of her head for approximately five minutes. The video showed that the entirety of her arrest lasted for 47 seconds and that she did not visibly lose consciousness at any point, and her medical records did not document injuries consistent with being struck in the head with batons. However, owing to the chaotic nature of the footage, and the fact that there are moments when § 87(2)(b) is not visible, the investigation could not rule out the possibility that any officer struck her with a baton or the butt-end of a baton before she was handcuffed. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

[illegible][illegible]

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 42).
- Lt. Witriol has been a member of the NYPD for 14 years and has been a subject in four CCRB complaints and 11 allegations, none of which were § 87(2)(g). Case 202003456 is pending Board review. § 87(2)(g)
- PO Centore has been a member of the NYPD for 16 years and has been a subject in three CCRB complaints and 19 allegations, none of which were § 87(2)(g)

[REDACTED] § 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of September 21, 2020, the NYC Comptroller's Office has no record of a Notice of Claim being filed regarding this complaint (BR 43).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Squad: 5

Investigator: Laura Strauss Inv. Laura Strauss September 21, 2021
Signature Print Title & Name Date

Squad Leader: Daniel Giansante IM Daniel Giansante September 22, 2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date